1939-40-41-42-43-44-45-46-47-48

File No. 3518/36

A CLASS

P. W. DEPARTMENT
E BRANCH

Subject:— Govt. Servants

1) Procedure re-dismissal, removal & reduction of ——

2) Action to be taken When Serious allegations are made against——

V/

A[K]48

I

File No. 3518/3c

Std. Scott. Slip 24-B

G.P K.—J H 3 -50,000—5.54
G. R. G. D No. 2108, dated 22-6-22.]

Correspondence

Sectt 78 A e

DOCKET SHEET (B).

Subject:—

File No. 3518/36

P. W. 3 DEPT.

E BRANCH.

References:—

Date.	To whom sent.	Notes instructions,

Government Servants.
Dismissal, removal or reduction of-
Procedure.

GOVERNMENT OF BOMBAY

Political and Services Department.

Circular No.1672/34.

Bombay Castle, 6th April 1939.

Read Government Resolution, No.1852/33 (Fin.) dated the 5th October 1936.

Circular.-Recently a question arose whether copies of the report of an officer who holds a departmental inquiry but is not empowered to pass final orders should be supplied to the person against whom the proceedings have been held. The proceedings of an inquiry generally include two kinds of reports, viz

(i) the preliminary report stating the allegations or results of preliminary investigation on which the formal inquiry was instituted;

(ii) the forwarding report of the Inquiry Officer in a formal departmental Inquiry.

2. Government is pleased to direct that the report referred to at (i), viz. the report in a preliminary inquiry which is usually conducted confidentially should be treated as confidential along with other papers of the preliminary inquiry. On the other hand, the report referred to at (ii), viz. the forwarding report of the officer who holds a departmental inquiry should form part of the proceedings of the case. If there are any facts or considerations which should be kept out of the public record the officer holding the inquiry should submit them separately and confidentially to the authority who is to pass orders.

By order of the Governor of Bom

G. Willes,

Chief Secretary to the Govt. of Bombay, Political and Services Department.

G.C.,No.1672/34, P.&S.D., dated the 6th April 1939.

To

The Secretary to the Governor,
The Accountant General, Bombay
The Prothonotary and Senior Master, High Court Bombay,
The Registrar, High Court, Appellate Side, Bombay,
All other Heads of Officers under the Several Deptts of the Secretariat,
All Departments of the Secretariat.

By letter.

No. of 1939.

Copy forwarded for information and guidance to

Id/-
28-4-

No.3518/36/29851

E.B.(I) P. W. D.

Submitted for information

Record

Through AE, TD, Con.D, El. E.I, El.E.II M.D.

I.E. P.W.E.E, C.E., E.E.II

IG/-
14-3-46

IG/-
17-3-46

IG/-
17-3-46

IG/-
19-3-46

IG/-
20-3-46

IG/-
20-3-46

Government Servants.
Action to be taken when serious allegation
are made against--.

GOVERNMENT OF BOMBAY
Political and Services Department.

Circular No.2733/34.

Bombay Castle, 9th December 1938.

CIRCULAR.

Government is pleased to direct that when a written complaint has been made alleging that serious offences have been committed by a Government servant, the Government servant should, if the officer to whom the complaint has been made, is satisfied that it is made in good faith that the person who makes it is ready to substantiate it and that the alleged offence is of a serious nature, be transferred and an immediate inquiry should be instituted by a Government officer of as high a rank as possible. Government is further pleased to direct that immediately there is ground to believe that a prima facie case exists the Government servant against whom the complaint has been made should be suspended.

2. If the officer to whom a complaint has been made is not a competent to order the transfer of such Government servant or the institution of an inquiry, or if the Government servant is not liable to transfer, he should report the case to the officer competent to pass the necessary order, who will proceed as directed in paragraph 1 above.

By order of the Governor of Bombay,

G. WILLES,

Chief Secretary to the Government of Bombay, Political & Services Department.

To

The Secretary to the Governor,
The Prothonotary and Senior Master, High Court Bombay,
The Registrar, High Court, ~~Appellate~~ Appellate Side, Bombay,
The Heads of Offices under the several Deptts of the Secretariat,
The Secretary, Bombay-Sind Public Service Commission,
The Accountant General, Bombay,
All Departments of the Secretariat.

By letter.

No. of 1938.

Copy forwarded for information and guidance to

Id/-
10-12-

No.2733/34-D.

Political and Services Department.
Bombay Castle, 25th October 1941.

Subject:- Government Servant's Conduct Rules:

Action to be taken when serious allegations are made against Government servants.

.....

Memorandum.

Government has decided that Government Circular No.2733/34, dated the 30th September 1940 and Government Corrigendum, No.2733/34, dated the 7th November 1940, on the subject mentionedxhexx above, should be cancelled. The undermentioned officers and departments are accordingly requested to return all copies of the Circular and Circular Corrigendum above referred to, to this Department at an early date.

By order of the Governor of Bombay,

V.H.Vachhrajani,

for Chief Secretary to the Government of Bombay,
Political and Services Deptt.

To

The Secretary to the Governor (for information),
The Prothonotary and Senior Master, High Court, Bombay,
The Registrar, High Court, Appellate Side, Bombay,
The Secretary, Bombay-Sind Public Service Commission,
The Accountant General, Bombay,
All Heads of Departments under the several Departments of the Secretariat,
All Departments of the Secretariat.

By letter.

ANP
21-48-56.

Government Servant's Conduct Rules.
Action to be taken when serious allegations are made against Government Servant belonging to the All-India Services or holding equivalent posts.

GOVERNMENT OF BOMBAY
Political And Services Department.

No. 2733/34.

Bombay Castle, 11th October 1941.

CIRCULAR.

The Government of Bombay is pleased to direct that when dealing with cases in which serious allegations are made against Government Servants who belong to the All-India Services or are holdsng of equivalent posts, the administrative departments concerned and the Heads of Departments under them should ~~xx~~take action on ~~xx~~ the following lines.

Whenever a serious charge reflecting on the integrity or honour of an officer of the All-India Services or of similar status is made publicly or by a responsible person and is supported by allegations of fact, those facts should be investigated and put on record at the earlist possible moment by the agency of an officer of position and trustworthiness on whose findings Government can rely. The investigation should normaly be made by an officer of the Department concerned, who should perferably be the Head of that Department. The result of this first investigation should be submitted immediately to Government in the administrative department concerned, to enable Government to decide, after considering the investigation officer's report, whether there is any ground for the institution of formal departmental proceedings ~~xx~~ or not and, if so, what are the points in dispute and the charge or charges which should be framed.

Government considers that, if the essential facts are not ~~xxx~~ fixed as far as possible at the outset, they tend to become more and more disputed and uncertain as time goes on, that when serious imputations are made against a responsible officer of Goverment, prompt investigation is in his interest as well as that of Government and that it should not be possible for such accusations to be completely disregarded at the ~~xxxx~~ time ~~xx~~ they are made and then to be brought up later when they can be neither proved nor disproved and yet be used to discredit an officer against whom some person has a grudge.

By order of the Governor of Bombay,

G. F. S. COLLINS,

Chief Secretary to the Government of Bombay,
Political and Services Department.

G.G.No.2733/34, P. & S.D., dated the 11th October 1941.

P. T. O.

To

The Secretary to the Governor,
The Secretary, Bombay-Sind Public Service Commission,
The Accountant General, Bombay,
All Heads of Departments under the Several Departments of the Secretariat,
The Prothonotary and Senior Master, High Court, Bombay,
The Registrar, High Court, Appellate Side, Bombay,
All Departments of the Secretariat.

By letter.

No. of 1941. Id/- 29-10-

Copy forwarded for information and guidance to

ANP
21-4-56.

Copy of a Memorandum from the Secretary to the Governor, No.135, dated the 10th January 1942.

.....

His Excellency the Governor is pleased to direct that whenever an order is passed suspending an officer belonging to a Secretary of State's service or appointed by the Secretary of State or the Secretary of State in Council, the fact and a brief statement of the reasons should be reported to this Office, and also the reduction, if any, ordered in his remuneration under section 247 (3) ~~thereof~~ of the Government of India Act, 1935. Similarly if the officer is subsequently reinstated, the fact and date should be reported.

2. If any such officers as are referred to above are at present under suspension in this Province, it is requested that a report about them, giving the dates of their suspension and the other particulars mentioned above, may be furnished to this Office.

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No.2733/34-D.
Political and Services Department.
Bombay Castle, 20th January 1942.

Forwarded with compliments to all Departments of the Secretariat (except the Separate Department) for information and guidance. The reports referred to in paragraph 1 of the Memorandum should be sent to the Political and Services Department for transmission to the Secretary to the Governor.

2. The Departments of the Secretariat are also requested to supply to the Political and Services Departments by the 25th January 1942 the information, if any, referred to in paragraph 2 of the Memorandum.

By order of the Governor of Bombay,

Sd/-
For Chief Secretary to the Government of Bombay,
Political and Services Department.

ANP
21-4-

Copy of a letter from the Government of Inida, Home Department, No.243/42-Establishments, dated the 1st August 1942.

.....

Subject:- Interprotation fo Section 240 (3) of the Government of India Act, 1935.

.....

I am directed to invite your attention to paragraph 5 of the annexure to the Home Department letter No. 81/41-Estblishment, dated the 24th October 1941, and to state that the Secretary of State has ruled that the requirements of Section 240(3) of the Gove rnmentof India Act 1935 are not complied with by giving the officer concerned an opportunity to defend himself during the enquiry into the charges against him and that it is necessary to give him a further opportunity to show cause against the penalty proposed to be imposed, if the penalty be one of dismissal or reduction in rank. The result of the Secretary of State's ruling must inevitably be further to protract the departmental proceedings which are in any case often of considerable duration. They, therefore, propose to address the Secretary of State in the matter with a view to obtain a ruling whether the technical requirements of Section 240(3) will be deemed to have been complied with if, when an officer is called upon to ~~officer~~ offer his defence in respect of the charges against him, he is also at the same time asked to show cause against the penalty considered prima facie to be true. In the meantime, it is necessary that the ruling already given by the Secretary of State should be followed. I am, however, to state that in the opinion of the Government of India the giving of a further opportunity to the accused officer to show cause against the penalty proposed to be imposed, should not involve the holding of a second regular enquiry. The only question to be considered at that stage would be the nature and degree of the punishment to be inflicted, and the officer charged should, therefore, be required to confine himself strictly to this question in any explanation that he might submit.

.....

Copy of the Home Department letter No.81/41-Ests., dated the 24th October 1941, addressed to all Provincial Governments.

.....

I am directed to forward a copy of a letter from the India Office No.S. & G.4537/40, dated the 11th October 1940, on the subject of making rules under section 247 of the Government of India Act, 1935, regarding enquiries into the conduct of officers under the rule-making control of the Secretary of State. The Government of India have consulted the Federal Public Service Commission and their tentative views on the various points raised in the India Office letter and on certain other matters connected therewith are summarised in the annexure to this letter. These questions involve considerations of which Provincial Governments have special knowledge and experience, and the Government of India will be glad to be favoured with the views of the Government of Madras/etc. on the various points discussed in the annexure.

I am also to request that the views of the Provincial Government on the suggestion made in paragraph 5 of the India Office letter may be furnished to the Government of India.

.....

Extract.....

Extract of paragraph 5 of the annexture to be above letter.

.....

5. In making any rules it will be necessary to make certain that the proceedure laid down complies with the provisions of subsection (3) of section 240 of tte Act. The sole intention of that subsection appears to have been to enbody in the Act iself a provisions producing precisely the same effect as had previously been produced by Classification Rule 55. The particular praseology employed therin has however given rise to some doubt whether, after an enquiry against an officer has been completed, it is not necessary formally to call upon him ot show cause aagainst the particular penalty proposed to be imposed. The Fedral Public Service Commission consider, and the Government of India agree, that the procedure under Classiffication Rule 55 or under the Public Servants' Inquiries Act afford substantial compliance with the spirit, if not also with ~~xxxxxx~~ letter, of section 240(3), and that no such action as is referred to in the last sentance is therefore necessary. In veiw, however, of the doubts felt in the matter, the Government of India have separately asked for an authoritative ruling of the Secretary of State on the point. If it is held by the Secretary of State that ~~xx xxxx~~ the strict requirements of the section completed he should be given a further opportunity of showing cause aginst the particular panalty proposed to be imposdd, and that this effect of the section was deliberately brought about, it is considered that in that case it should be provided in the rules that at the time the officer concerned is given such an opportunity he should also be supplied with a copy of the enquiring officer's report as, otherwise, the protection deliberately afforded by statute would be rend red illusory. On the ohter hand, if it is held that the effect produced by sanction 240(3) has been so produced par incuriam all that would be necessary in that sase to secure compliance with the provisions of the Act would be to lay down that when charges are framed against an officer care should be taken to see that, in a dition to being called upon to offer his defence, the accused is also called upon formally to show cause against the punishment considered prima facia to be appropriate to the case, should the charges be found true.

X is that after the enquiry against an accused officer has been

.....

No.2733/34-D.
Political and Services Department.
Bombay Castle, 21st August 1942.

.....

Forwarded to all Departments of the Secretariat for information and guidance.

By order of the Governor of Bombay,

Sd/-

For Chief Secretary to the Government of Bombay,
Political and Services Department.

Id/-
11-8-

26/14/56

Below copy of Express Letter from the Government of Inida, Home Department, No. 156/42-Ests., dated the 10th July 1942.

No. 6161/34-D.
Political and Services Department.
Bombay Castle, 6th August 1942.

Forwarded to -

All Departments of the Secretariat,

All Heads of Offices under the several Drpartments of the Secretariat,

with an intimation that Government has decided to follow suit so far as the Services under its control are concerned. The Departments and Heads of Offices are, therefore, requested that any case in which action on the lines of the Government of ~~Inida~~ India letter has already been taken or may have to be taken in future should be reported to Government in the Political and Services Department.

2. The rules corresponding to rule 49 of the Civil Services (Classification Control and Appeal) Rules and article 353 of ~~hm~~ the civil Services Regulations are rule 33 of the Bombay Civil Services Conduct Discipline and Appeal Rules and rule 186(a) of the Bombay Civil Services Rules.

By order of the Governor of Bombay,

Sd/-

For Chief Secretary to the Government of Bombay.
Political and Services Department.

ANP
24-4-56.

Copy Express Letter from the Government of India, Home Department, No.156/42-Ests., dated the 10th July 1942.

"Unauthorised desertion of his post by a public Servant in the face of enemy action or threat of enemy action clearly amounts to grave misconduct and would therefore constitute a "good and sufficient" reason within the meaning of Rule 49 of Civil Services (Classification, Control and Appeal) Rules for removal or dismissal, in addition to any penalty provided in the Essential Services (Maintanance) Ordinance. Loss of pension would then follow automatically in virture of the provisions of article 353 of the Civil Services Regulations and it would also be possible to forfeit the Government contribution, if any, to the individual's Provident Fund.

2. The Government of India do not consider it necessary to bring these facts to the notice of Government Servants generally. Indeed, to do so would imply a general lack of faith in their staunchness which would be unjustifiable. On the other hand if individual cases of such desertion of duty occur, they consider that not only disciplinary action should be taken on the lines above lines, but also that the fact that it has been taken should be given publicity.

3. The Government of India propose to follow this procedure so far as concerns members of Services under their own control and will recommend similar action to the Secretary of State in the case of Services under his control. Provincial Governments are requested to follow suit so far as their own Services are concerned and also to report to the Government of India any cases in which action on these lines has already been taken or may have to be taken in future."

Id/-
11-8-

Id/-
11-8-42.

gh/86/4/56

Copy of a letter from the Government of India Home Department, No. 243/42-Eats., dated the 23rd February 1943.

Subject:- Interpretation of Section 240(3) of the Government of India Act, 1935.

In continuation of the Home Department letter No. 243/42-Eats., dated the 1st August 1942, on the subject noted above, I am directed to state that the Secretary of State has accepted the view taken by the Government of India that in cases where the penalty considered prima facie appropriate is dismissal, removal or reduction in rank, the technical requirements of Section 240(3) of the Government of India Act, 1935, will be complied with if, when an officer is called upon to offer his defence in respect of the charges against him, he is also asked, at the same time, to show cause against the imposition of the penalty considered prima facie to be appropriate, should the charges against him be held to have been proved. The Secretary of State has suggested that in order to prevent any risk of misunderstanding, it should in such cases be made clear to the officer concerned that any representation that he might make in regard to the action to be proved will be considered by the final authority concerned before any order punishing him is passed.

Below copy of a letter from the Government of India, Home Department, No. 243/42-Ests., dated the 23rd February 1943 regarding interpretation of Section 240(3) of the Government of India Act 1935.

No.n2733/34-D.
Political and Services Department.
Bombay Castle, 11th March 1943.

Forwarded for information and guidance to:-

The Secretary to the Governor,
The Prothonotary and Senior Master High Court, Bombay,
The Registrar, High Court, Appellate Side, Bombay,
The Secretary, Bombay-Sind Public Service Commission,
The Accountant General, Bombay,
All ohter heads of Departments ~~of the~~ under the Several Departments of the Secretariat,

} in connection of Government Endorsement Political and Services Department, No.2733/34-D. dated the 7th December 1942.

All Depaetments of the Secretariat in continuation of ~~Govt~~ Government Endorsement, Political and Services Department. No.2733/34-D, dated the 21st August 1942.

By order of the Governor of Bombay,

C. K. Maru,

For Chief Secretary to the Government of Bombay,
Political and Services Department.

Copy of a letter from the Government of India, Home Department, No. 229/42-Ests., dated the 31st March 1943, and its accompaniment.

I am directed to refer to this Department express letter, No. 156/42-Ests., dated the 10th July 1942, relating to the action to be taken against Government servants who desert their duty in the face of enemy action or the threat of such action, and to forward, for information, a copy of the Home Department Office Memorandum, No. 229/42-Ests., dated the 31st March 1943.

Copy of the Home Department Office Memorandum, No. 229/42-Ests., dated the 31st March 1943.

The undersigned is directed to invite a reference to ~~xx~~ this Department office memorandum, No. 156/42-Ests., dated the 10th July 1942, forwarding to all Provincial Government a copy of the Home Department Express letter bearing the same number and date wherein it was suggested that publicity should be given to the disciplinary action taken in individual cases of desertion of duty. A question has been raised as to the manner in which publicity should be given in such cases. All departments are informed that publicity is intended among Government servants only. All that is necessary in such cases therefore is for the department concerned when notifying other departments in accordance with present practice that a particular Government servant has been dismissed and debarred from further employment under Government to give also the reasons for the dismissal when the case is one of desertion of duty in the face of enemy action or ~~xx~~ the threat of such action. This procedure should be followed in the case of both the superior and the inferior staff. In the case of a Government servant other than a member of an inferior service the Government of the Province from ~~xx~~ which the person concerned comes should also be informed.

L.P. & S.H.2

No. 6161/34-D.

Political and Services Department.

Bombay Castle 28th April 19431

Forwarded to:-

All Departments of the Secretariat,
All Heads of Offices under the several Departments of the Secretariat,

for information and guidance in continuation of Government Endorsement, Political and Services Department, No. 6161/34-D, dated the 6th August 1942.

By order of the Governor of Bombay,

C. K. Maru,

For Chief Secretary to the Government of Bombay,
Political and Services Department.

E.B.

Submitted.

2. The instruction contained in the Government of India H.D. memorandum have been noted.

Id/-
25-5-43

Id/-
25-5-43

Id/-
25-5-43

Id/-
26-5

Id/-
26-5

Id/-
28-5-43

ANP
24-4-

Speedy disposal of disciplinary cases

GOVERNMENT OF BOMBAY.

Political and Services Department.
Resolution No.2854/34.
Bombay Castle, 1st July 1943.

Letter from the Government of India, Home Department, No. 9/17/42-Eats., dated the 27th May 1943, addressed to all Provincial Governments, forwarding a copy of their Office Memorandum of even number and date:-

"I am directed to forward for the information of the Provincial Government, a copy of the Home Department Office Memorandum, No. 9/17/42-Eats., dated the 27th May 1943, on the subject mentioned above."

RESOLUTION:- Copies of the correspondence should be forwarded to all Heads of Departments and Office and all Departments of the Secretariat for information and guidance.

By order of the Governor of Bombay.

I. H. TAUNTON,

Chief Secretary to Government.

To

The Secretary to the Governor,
The Accountant General, Bombay,
All Heads of Departments and Heads of Offices under the several Departments of the Secretariat,
All Departments of the Secretariat.

*Printed as an accompaniment to this Resolution.

No. of 1943.

Copy forwarded for information and guidance to

Accompaniment to Government Resolution, Political and Services Department, No.2854/34, dt. the 27th/1st July 1943.

Copy of Office Memorandum, No. 9/17/42-Eats., from the Govt. of India, Home Department, dt. the 27th May 1943.

Subject:- Speedy disposal of disciplinary cases.

The suggestion has been made that rule 55 of the Civil Services (Classification, Control and Appeal) Rules should be amended so as to secure a more expeditious disposal of disciplinary cases against Government servants.

2. The desirability, at the present juncture, of doing everything possible to secure such speedy disposal cannot be over emphasised. It is considered, however, that it is neither necessary nor desirable to amend the rules, and that the object in view could as well be achived by issuing certain instructions within the framework of the existing rules.

3. Though the procedure prescribed under classification rule 55 is undoubtedly elaborate, the difficulties that procedure have in the opinion of Government, been exaggerated. The essential requirements of that rule are that the charges against the accused shall be reduced to writing, that he shall be given an adquate adequate opportunity of putting forward his defence, both orally

and.....

and in writing, and that he shall be allowed to xxxxx cross-examine the prosecution witnesses and to call witnesses in his defence. Compliance with these essential requirements should not xxxxxxxx ordinarily lead to protracted proceddings.

4. Cases have, however, frequently come to notice in which such enquiries have dragged on for months, and even years. Government consider that the delay in such cases is generally to be attributed not to inherent difficults presented by the procedure itself, but partly to the tendency on the part of the enquiring officer to be overmeticulous in following the prescribed procedure and, to a greater extent, to the successful adoption of dilatory tactics by the officer against whom procudings are being taken. Government believe therefore that expedition in the conduct of the enquiry could be secured without departing from the prescription of rule 55 or doing injustice to the accused.

5. The undersigned is accordingly to request aht the very great importance of securing a prompt investigation and speedy disposal of disciplinary cases should constantly be borne in mind and, in particular, that instructions should be issued to all officers who may have to be entrusted with the conduct of disciplinary enquiries, particularly in cases of bribery and corruption, that, while they should give all reasonable eacilities to the accused to make their defence, they should confine themselves in the main to the essentials of the prescribed procedure and that they should firmly xxxx resist any tendency on the part of the accused officers to adopt dilatory tactics. In suitable cases recourse may also be had to the Public Servants' (Enquiries) Act, 1850, which gives power to the authorities appointed to hold enquiries to summon witnesses and to record their xx evidence on oath.

E.B.

Note record

Id/-
18-8-43

Id/-
18-8-43

Copy of a memorandum from the Secretary to the Governor of Bombay, No.135, dated the 17th September 1943.

Subject:- Prosecution of a secretary of State's officer by a criminal court.

With reference to this office memorandum No.135, dated the 10th January, 1942, His Excellency the Governor is pleased to direct that whenever criminal prosecutions of officers belonging to a Secretary of State's service or appointed by the Secretary of State or the Secretary of State in Council are sanctioned under section 197 of the Criminal Procedure Code, a report, with a brief statement of the circumstances, should be forwarded to this office immediately after the prosecution in sanctioned.

2. Similarly, if any such officer is convicted by a criminal court, the fact should be reported to this office together with a copy of the judgement, and, if there is subsequently an appeal or an application for revision, a copy of the appellate or revisional judgement should also be furnished in due course.

No.2731/34-D.
Political and Services Department.
Bombay Castle, 6th October 1943.

Forwarded with compliments to all Departments of the Secretariat (except the Separate Department) for information and guidance with reference to Government x endorsement, Political and Services Department, No.2733/34-D,

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3518/36.

20th January 1942.

By order of the Governor of Bombay,

C. K. Maru,

For Chief Secretary to the Government of Bom.,
Political and Services Department.

Id/-
4-10-

E.B.

Submitted for information .

2. Para 2 of the G. I. letter has been noted

Id/-
18-10-43

Id/-
20-10

Id/-
22-10-43.

Below *copy of a memorandum from the Secretary to the Governor of Bombay, No.135, dt. the 16th February 1944.

No.2733/34-D.
Political and Services Department,
Bombay Castle, 29th February 1944.

Forwarded with compliments to all Departments of the Secretariat (except the Separate Department) for information and guidance in continuation of Government endorsement, Political and Services Department, No.2733/34-D, Dt. the 2nd October 1943.

By order of the Governor of Bombay,

C. K. Maru.

For Chief Secretary to the Government of Bombay,
Political and Services Department.

Copy of a memorandum from the Secretary to the Governor of Bombay, No.135, dated the 16th February 1944.

Subject:- Amount of subsistence allowance to be granted to Secretary of State's Officers during the period of suspension.

"With reference to this Office Memorandum No.135, dated 10th January 1942, indicating the action to be taken whenever an order is passed suspending an Officer belonging to a Secretary of State's service or appointed by the Secretary of State or the Secretary of State in Council, P. & S.D. is requested to note that section 247(3) of the Government of India Act, 1935, empowers the Governor in his individual judgement to fix the amount of subsistence allowance to be granted to a Secretary of State's Officer under suspension; and the Governor's decision in this ~~regard~~ respect is unfettered by any other requirement. At the ~~same~~ same time it would not be in accord with the spirit of the Act that an Officer should be given terms less favourable than he had when first appointed to the service. Before section 247(3) of the constitution Act came into force, an I.C.S. Officer was entitled to subsistance allowance ranging from Rs. 333 1/3 to Rs. 666 a month according to length of service by the general ~~mmt~~ order issued by the Secretary of State in Council under Fundamental Rule 43. The provisions of what order should be borne in mind when the subsistence allowance of Officers who were governed by it before the 1st April 1937 is fixed.

2. An Officer under suspension pending a criminal prosecution is entitled to receive the subsistence allowance even after conviction, until the Secretary of State's orders removing him from service are received."

E.B. P. W. D.

Submitted for information
Record

Id/-
17-3-44

Id/-
19-3-44

Id/-
20-3-44

Id/-
23-3-44

ANP
24-4-

Below copy of a memorandum from the office of the ~~Secretary~~ Secretary to the Governor, No. 135, dated the 3rd June 1944.

No.2733/34-D.
Political and Services Department.
Bombay Castle, 23rd June 1944.

Forwarded with complements to all Departments of the Secretariat, (except the Separate Department) for information and guidance with reference to Government endorsement, Political and Services Department No.2733/34-D, dated the 20th January 1942. The Supplimentary reports referred to in the memorandum should be sent to Political ~~and~~ and Services Department for transmission to the office of the Governor's Secretary.

By order of the Governor of Bombay,

A. F. Gandhi,

For Chief Secretary to the Government of Bombay
Political and Services Department.

Copy of a memorandum from the office of the Secretary to the Governor, No. 135, dated the 3rd June 1944.

"With reference to this office Memorandum No. 135, dated the 10th January 1942, regarding the supply of information about the placing of Secretary of State's officers under suspension pending enquiries, it has been pointed out that these enquiries tend to be very long drawn out. The expenditious disposal of them is regarded as very important. The Political and Services Department is, therefore, requested to note that in all cases of these kind the intial report should be supplemented every three months with reports to this office of the progress made."

CONFIDENTIAL

Delays in the disposal of disciplinary cases against Government servants.

GOVERNMENT OF BOMBAY

Political and Services Department.
Resolution No.2854/34.
Bombay Castle, 5th July 1944.

Read Government Resolution, Political and Services Department, No. 2854/34, dated the 1st July 1943.

Letter from the Government of India, Home Department, No. 226/44-Eats., dated the 6th June 1944:-

"I am directed to say that the Government of India are impressed with the desirability of doing everything possible to speed up all stages of the enquiry when serious disciplinary proceedings are taken against Government Servants and they have considered what measure, if any, can be adopted to reduce the long delays which frequently occur in the disposal of such proceedings. There is reason to believe that some at least of the delay is attributable to the dilatory tactics of the Government servants whose conduct is under investigation. A method which suggests itself to the Government of India of preventing, so far as possible, resort to such tactics is the prescription, as in judicial proceedings, and rigid enforcement, of a time limit within which a replies must be submitted by the persons concerned to the charges framed against them. I am to commend to the Provincial Government the adoption of this practice, if it is not already in force, in disciplinary cases against officers serving under their administrative control."

RESOLUTION:-Copies of the letter from the Government of India should be forwarded to the officers and Departments concerned, in continuation of Government Resolution, Political and Services Department, No. 2854/34, dated the 1st July 1943. The practice referred to by the Government of India of prescribing and rigidly enforcing a time limit within which replies must be submitted by the persons concerned to the charges framed against them in disciplinary cases should be adopted in disciplinary cases against officers serving under the Government of Bombay.

By order of the Governor of Bombay,

H. T. SORLEY,

Chief Secretary to the Govt. of Bombay,
Political and Services Department.

G.R. No. 2854/34, P. & S.D., dated the 5th July 1944.

To

The Secretary to the Governor,
The Account General, Bombay,
All Heads of Departments and Heads of Office under the several Departments of the Secretariat,
All Department of the Secretariat,

No. of 1944.

Copy forwarded for information and guidance to

E.B.I-

Note & record.

Id/-
17-8-44

Id/-
18-8-44

Id/-
19-8-44

ANP
24-4-

No. 1581/34-D.

Political and Services Department
Bombay Castle, 11th July 1944.

From

Dr. H. T. Sorley, C.I.E., I.C.S.,
Chief Secretary to the Government of Bombay,
Political and Services Department;

To

The Secretary to the Government of India, Home Deptt.

Subject:- Procedure to be followed before imposing penalties other than dismissal, removal or reduction under rule 49 of the Civil Services (Classification, Control and Appeal) Rules.

Sir,

With reference to Mr. Chainani's letter No. 174/6/43-Ests., dated the 31st May 1944, I am directed to state that the Government of Bombay does not consider it desirable to adopt, in respect of the services under its control, the procedure in respect of penalties other than dismissal, removal or reduction proposed to be adopted by the Govt. of India for their services since, in its opinion, this procedure will only add to the work of officers who are already overworked without securing in any way any commensurate improvement on the existing practice.

2. If fuller evidence is considered necessary in these minor cases, it should suffice if (i) the authorities inquiring into the acts which occasioned the punishments are instructed to make the record, where this is not done, such that it can be readily followed by an appellate authority and (ii) there is in every case a self-contained statement showing the reasons for the punishment. The officers under the Government of Bombay are being instructed accordingly.

Yours obedient servant,

C. K. Maru,

Per Chief Secretary to the Government of Bombay,
Political and Services Department.

No. 1581/34-D.

Political and Services Department.
Bombay Castle, 15th August 1944.

Copies, with copies of the letter under reply, and its accompaniment, forwarded with compliments for information and guidance to:-

The Secretary to the Governor,
The Secretary, Bombay-Sind Public Service Commission,
The Accountant General, Bombay,
All other Heads of Department and Offices under the several Departments of the Secretariat,
All Departments of the Secretariat(except the Separate Department).

By.....

By order of the Governor of Bombay,

C. K. Maru,
For Chief Secretary to the Government of Bombay,
Political and Services Department.

Copy of a letter from the Government of India, Home Department, No. 174/6/43-Ests., dated the 31st May 1944.

Subject:-Procedure to be followed before imposing penalties other than dismissal, removal or reduction under rule 49 of the Civil Services (Classification, Control and Appeal) Rules.

I am directed to invite attention to rule 55 of the Civil Services (Classification, Control and Appeal) Rules under which the procedure laid down in that rule is to be followed only when the penalty to be imposed is one of dimissal, removal or reduction. Rule 6 of the rules applicable to Subordinate Services under the Central Government (copy attached for ready reference) requires that a member of a subordinate service should be given an adequate opportunity of making any representation that he may desire to make before an order imposing any penalty, other than an order of censure or suspension, is passed against him. There is no provision in the rules laying down the procedure to be followed before an order imposing a penalty, other than an order of dismissal, removal or reduction is passed against a Government Servant who does not belong to a subordinate service. The Federal Public Service Commission do not regard the position as satisfactory and have suggested that the procedure under rule 55 should be made compulsory in all disciplinary cases. They think that it is desirable in itself that definite proceedings should be drawn up before any punishment is imposed on an officer. Moreover, the Commission consider it essential that if they are to tender their advice in such cases there should be material on the record on which their opi-nion can be based.

2. The difficulty is to reconcile the requirement of such a procedure with the requirements to avoid anything which will contribute to delay in disposing of disciplinary cases. The Government of Inida after consulting the Commission have come to the conclusion that it would meet the object which the Commission have in mind if the procedure laid down in the Rules applicable to Central Subordinate Services were followed in the case of all services, namely, that no order imposing a penalty other than dismissal, removal or reduction should be passed against any Government servant unless he has been given an adquate opportunity of making any representation that be may desire to make and such representation, has been taken into consideration before the order is passed. Before he makes such representation, he will naturally have to be told what the main allegations against him are, but the more meticuleus procedure of framing charges and holding an enquiry would be avoided.

3. It has recently been held that in cases in which promotion are made not by selection but on the basis of seniority, the passing over of an officer on the gorund of his unfitness to hold the higher past amounts to withholding of promotion within the meaning of rule 49 (ii) of Civil Services (Classification, Control and Appeal) Rules. The Federal Public Service Commission have agreed that it will be administratively incovenient to ask a person to show cause before he is passed over on the ground of his unfitness and that the procedure suggested in paragraph 2 above need not, therefore, be followed in such cases. The Government servant passed over will, however, have a right of appeal under rule 56 of the said rules.

4--------

4. The Government of India propose to adopt the procedure on the lines indicated above in respect of services under their control. They consider, however, that it would be desirable to have uniformity in this matter, and would therefore be glad to be informed whether the Provincial Government sees any objection to adopting a similar procedure in respect of services under their control.

Copy of rule 6 of the rules applicable to subordinate Services under the Central Government:-

"6 (1) Without prejudice to the provisions of rule 55 of the Civil Services (Classification, Control and Appeal) Rules, no order imposing a penalty specified in rule 3, other than an order of censure or suspension or an order based on facts which have led to his conviction in a criminal court, shall be passed against a member of a subordinate service unless the officer concerned has been given an adequate opportunity of making any representation, that he may desire to make and such representation, if any, has been taken into consideration before the order is passed:

Provided that the requirements of this sub-rule may for sufficient reasons to be recorded in writing, be waived where there is difficulty in observing them and they can be waived without injustice to the officer concerned.

(ii) The authority imposing any penalty under these rules shall maintain a record showing:-

(a) the allegations upon which he proceeded against the officer punished,
(b) the officer's representation, if any, and the evidence taken, if any,
(c) the finding and the grounds thereof.

(iii) Where the officer to be punished has been lent to the punishing authority:-

(a) the power to remove or dismiss shall not be deemed to have been delegated to any authority and shall not be exercised by any authority other than the lending authority; the borrowing authority shall in a case where he considers that the punishment of removal or dismissal should be imposed, complete the inquiry and report the officer concerned to the lending authority for such action as that authority may consider necessary; and

(b) the punishing authority shall consult the lending authority before imposing any lesser penalty (except suspension), and in the case of suspension shall report forthwith to the lending authority the circumstances leading to the imposition of that penalty.

Explanation:-For the purposes of this sub-rule the holder of a post borne for the purpose of recruitment on the cadre of a provincial subordinate service shall be deemed to have been lent by the local Government of the province concerned to the authority to whom he is subordinate in such post."

POLITICAL AND SERVICES DEPARTMENT.

Bombay Castle, 13the Feb 1945.

Government of India Act, 1935.

No. 1581/34- In exercise of the powers conferred by clause (b) of sub-section (2) of section 241 of the Government of India Act, 1935, the Government of Bombay is pleased to amend the Bombay Civil Servi-ces Conduct, Discipline and Appeal Rules as follows, namely:-

In the said rules, after rule 81 the following new rule shall be inserted, namely:-

"81-A. No Government servant shall be a member, representative or office of any Association ~~representing~~ representing or purporting to represent, Government servants or any class of Government servants unless such association satisfies the following conditions, namely:-

(a) Membership of the association shall be confined to a distinct class of Government servants, and shall be open to all Government servants of that class.

(b) The association shall ~~not~~ not be in any way connected with, or affiliated to, any association which does not, or any federation of associations which do not, satisfy condition(a).

(c) The association shall not be in any way connected with any political party or organisation, or engaged in any political activity.

(d) The association shall not:-

(i) issue or maintain any periodical publication except in accordance with any general or special order of Government;

(ii) except with the previous sanction of Government, publish any representation on behalf of its ~~its~~ its members, whether in the press or otherwise.

(e) The association shall ~~not~~ not, in respect of any election to a legislative body, or to local authority or body, whether in India or elsewhere:-

(i) pay, or contribute towards, any expenses incurred in connection with his candidature by a candidate for such election;

(ii) by any means support the candidature of any person for such election;

(iii) underteke or assist in the registration of electors, or the selection of a candidate for such election.

(f) the association shall not:-

(i) maintain or contribute towards the maintenance of any member of a legislative body or of any member of a local authority or body, whether in India or elsewhere, or

(ii) except with the general or special sanction of Government, and subject to such conditions as Government may impose, pay, or contribute towards the expenses of any trade union which has constituted a fund under section 16 of the Indian Trade Unions Act, 1926 (XVI of 1926);

Provided that Government may, by general or special order, dispense with conditions (a) and (b) in the case of any association.

By order of the Governor of Bombay,

E. W. PERRY, Chief Secy.

Copies forwarded with compliments to:-

The Secretary to the Governor,

The Accountant General, Bombay.

The Secretary, Bombay-Sind Public Service Commission.

All Departments of the Secretariat.

No.179/44-Eats.
Government of India,
Home Department.

From

The Hon'ble Mr. E. Conran-Smith, C.S.I., C.I.E., I.C.S.,
Secretary to the Government of India.

To

The Chief Secretaries to all Provincial Governments
New Delhi, the 19th February, 1945.

Subject:- Procedure for transmitting the recommendations of the Government of India in disciplinary cases as against members of the Secretary of State's Services employed under Provincial Government.

Sir,

In connection with a recent case involving removal of a member of one of the Secretary of State's Services employed under a Provincial Government the Procedure for transmitting to the Secretary of State the recommendations of the Government of India in such matters has been reviewed. According to the orders of the Secretary of State, proposals for the compulsory, retirement or removal of officers of the Secretary of State's Services have hitherto been submitted to him in a despatch from the Governor General in Council. In this matter, no distinction has been made between cases of officers employed under the Central Government and of those employed in the Provinces. From the point of view, however, of the constitutional responsibilities of the Governor General in Council with regard to the Services, the two types of cases can be clearly differentiated. In respect of officers of the Secretary of State's Services employed under Provincial Governments, the Governor-General in Council has now no locus standi, and the procedure so far followed in regard to the transmission of the recommendations of the Government of India to the Secretary of State in disciplinary cases against these officers was not in fact in accordance with sound constitutional practice. That the position is as stated above was realised some years ago and it was only as a measure of convenience that the existing arrangements were allowed to continue.

2. It has now been decided in consultation with the India Office that the procedure should be changed and that all disciplinary cases relating to individual officers of the Secretary of State's Services serving in connection with the affairs of a Province should be handled by the Public Secretariat of the Governor General and not as hitherto by a Department of the Government of India. I am therefore to request that communications regarding disciplinary cases of individual officers of those Services serving under a Provincial Government in which the orders of the Secretary of State to the Governor General (Public). General matters relating to the Services as a whole will continue to be handled as at present, by the appropriate Department of the Government of India and communications on such matters should be addressed accordingly.

I have the honour to be,
Sir,
Yours most obedient Servant,

Sd/- E.Conran-Smith,

Secretary to the Government of India.

P. W. D.

No. 1580/34-D.
Political and Services Department,
Bombay Castle, 2nd March 1945.

Forwarded with compliments for information to:-

The Secretary to the Governor,

All Departments of the Secretariat (except the Separate Department).

By order of the Governor or Bombay,

Sd/-

for Chief Secretary to the Govennment of Bombay.

(E.B.I.)

Submitted for information.

2. The instructions of the Government of India in para 2 of its letter are noted.

Id/- S. A. J.
13-3-45.

Id/-
13-3-45

Id/-
14-3-45

ANP
25-4-

Below copies of a letter from the Government of India, Home Department, No.186/44-Ests., dated the 29th January 1945, and its accompaniments.

No.1580/34-D.
Political and Services Department,
Bombay Castle, 26th April 1945.

Forwarded to the under mentioned officers and Departments of the Secretariat for information and guidance (with reference to Government Resolutions, Revenue Department, No.11071, dated the 6th December 1913 and No11074/275-Confl., dated the 6th December 1918.)

2. The Secretary of State's interpretation regarding the applicability of section 240(3) of the Government of India Act, 1935, equally holds good in the case of the officers, under the rule-making control of the Government of Bombay. Consequently, before an order of removal or compulsory retirement from service on the ground of misconduct, insolvency or inefficiency is passed against any Government servant, he should be given a reasonable opportunity of showing cause against the action proposed to be taken against him.

By order of the Governor of Bombay,

Sd/-

for Chief secretary to the Government of Bombay,
Political and Services Department.

To

The Secretary to the Governor,
The Accountant General, Bombay,
All Heads of Departments under the several Departments of the Secretariat,
All Departments of the Secretariat.

With copies of Government Resolutions, Revenue Department, No.11071, dated the 6th December 1913, and No11074/275-Confl., dated the 6th December 1918, to----

The Legal Department,
The Reconstruction Department,
The Finance Department,
The Finance Department(Gen.).

Copy of a letter from the Government of India, Home Department, No. 186/44-Ests., dated the 29th January 1945.

Subject:- Compulsory retirement of officers on the ground of inefficiency or unfitness for further advancement.

"I am directed to forward for the information of the Provincial Governments a copy of the papers noted below on the subject mentioned below:- above.-

1. Letter to the India Office No.186/44-Ests., dated the 17th October, 1944.
2. Letter from the India Office No.S. & G.4630/44, dated 29th November, 1944."

Copy of a letter No.186/44-Ests., dated the 17th October, 1944, from the Secretary to the Government of India, Home Department, New Delhi, to His Majesty's under Secretary of State for India, India Office, London.

Subject:- Compulsory retirements of officers on the gorund of inefficiency or infitness for further advancement.

"I am directed to invite a reference to the correspondence resting with the Secretary of State's Public dispatch No. 102 dated the 18th April, 1918, on the subject noted above, and to foward for information copies of the Home Department letters Nos. 1409-1419 and 1422-1432, both dated the 28th July 1933, with which the Secretary of State's instructions on the subject were communicated to Provincial Governments.

2. I am to say that so far the Government of India have consistently held the view that, the compulsory retirement of an officer, except in cases to which Note 1 to Art.465A, Civil Service Rule applies, amounts to 'removal' within the meaning of clause (vi) of rule 49 of the Civil Service (Classification, Control and Appeal) Rules, and that the procedure laid down in rule 55 of those Rules must be followed before an officer could be compulsory retired. This view has been based on the considerations (i) that the orders of 1913 must be considered to have been superseded by the statutory provisions of the Civil Service (Classification Contorl and Appeal) Rules, if the former are in any way inconsistent, with the letter, and (ii) that, in fact, the orders of 1918 and rule 55 are not in conflict because the rule provides for essentially the same procedure, though in more precise and detailed form, as the orders of 1913 which required that the oficer concerned should be "allowed a full opportunity to be heard in his defence and that the matters alleged against him should be stated with such precision as the circumstances permit." Further, in view of the fact that rule 55 required that the charges to be framed against an officer should be definite and should be supported by a precise and adequate statemtn of facts alleged, the Government of India have held that a general charge of inefficiency or of unfitness ffo further advancement, even when supported by a series of unfavourable reports, would not be sufficient for the purposes of the above rule and that the framing of some clear and specific charges is necessary even in such cases. The justification for this view lies in the consideration that in the absence of individual charges there will be little which the officer could say in his defence except to allege prejudice or recite positive instances of what he regarded as of ficiency. It is also necessary for the Federal Public Service Commission to have before them a clear statement of the charges and the answers thereto, if they are to reach a fair decision. The rule permits "other circumsatances", e.g., adverse reports of superior officers, being taken into consideration and it was considered that these together with a few proved charges relating to some specific instances of inefficiency would enable action being taken against an officer whose inefficiency is undoubted or who is really unfit for further retention in service.

3. It has, however, been contended by one provincial Government that distinction should be drawn between removal as a penalty and removal on the ground of inefficiency and that it is impracticable and unnecessary to frame any definite charges in the letter class of cases. In support of this contention the India Office letter No. S. & G.3557/44, dated 20th May 1944, relating to the case of Mr. Sardar Singh, I.P., has been cited. In that letter the Secretary of state has

directed.....

directed that if after a further trial, Mr. Sardar Singh, is still considered unfit for promotion as Superintendent of Police, he should be called upon to show cause why he should not be removed from service on the ground that he has proved inefficient and unfit for further advancement, and this has been construed as implying that the Secretary of State does not contemplate 'clear and specific' charges being framed in such cases. The Government of India consider that if this inference is not correct. It appears to them that what the Secretary of State intended to convey by asking that Mr. Sardar Singh "should be called upon to show cause" etc., was that proceedings for removal from service should be instituted against the officer, if he continue to be inefficient and that he did not intend to lay down the procedure which should be allowed if it become necessary to take such action.

4. It has also been represented that it is generally difficult to frame clear and specific charges in such cases and the Government of India have reason to believe that this difficulty has in some instances acted as a deterrent against action being taken to remove inefficient officers. The Government of India consider it very important that clear and definite instructions should be laid down as to the method of getting rid of such officers. I am therefore to request that the Secretary of State may be moved to consider the whole matter and that his instructions, if any, may be communicated to the Government of India at an early date.

Copy of a letter No.S. & G.4880/44, dated the 29th November 1944, from India Office, London, to the Secretary to the Government of India, Home Department, New Delhi.

Question of the procedure to be followed in dealing with compulsory retirement of officers on the ground of inefficiency or unfitness for further advancement.

I am directed to refer to your letter of the 17th October 1944, No.186/44-Ests., regarding the compulsory retirement of officers on the ground of inefficiency or unfitness for further advancement.

In reply I am to say that the removal from the Service of an officer of Government is a serious matter for him whatever the reason for removal may be and the provisions of Section 240(3) of the Government India Act 1935 apply to removal as well as to dismissal or reduction in rank. The Secretary of State therefore agrees with the Government of India that, except in cases to which note 1 of Article 465A of C.S.R. applies, it is necessary to follow the procedure, including the framing of clear and specific charges, laid down in classification Rule 55 (or, when they have been promulgated, in the rules to be made under section 247 of the Act of 1935 - see correspondence resting with this Office letter of 4th August 1944, No.S. & G.3631/44.).

I am to ask that if there is any indication that provincial Governments are in doubt in regard to this matter the Government of India will be good enough to explain the position to them.

(E.B.I.)

Submitted for information.

2. The instructions in para 2 of the P & S.D. endt. at p 57 ante are noted.

Record
thgh. E.B.II

Id/- S.A.J.
8-5-45
15

Id/-
15-5-45

Id/-
15-5-45

Id/-
15-5-45

Id/-
16-5-45

ANP
25-4-

Copy of a letter from the Secretary to the Governor General(Public) No.30/38/45-GG(A), dated the 28th May 1945.

Subject:- References relating to individual members of the Secretary of State's Services serving under Provincial Governments.

"I amd directed to invite a reference to paragraph 2 of the letter from the Home Department of the Government of India, No.179/44-Ests., dated the 19th February 1945, in which the Provincial Government were asked to address to the Secretary to the Governor-General(Public) communications regarding disciplinary cases of individual officers of the Secretary of State's Services serving in connection with the affairs of a Provice. That change in procedure was made in recognition of the fact that the Governor-General in Council has now no constitutional footing in such cases. The same change in procedure should logically be made in the handling of the other cases (i.e. cases not strictly disciplinary) which relate to individual officers of the Secretary of State's Services who are serving in connection with the affairs of Provinces. This would cover all memorials and representations of such officers, and all cases affecting such officers individually, which the Provincial Government are not themselves competent to dispose of. Instances are the rate of special additional pension to be granted to an officer, or of compassionate allowance to be paid to a dismissed officer, and requests of individual officers for relaxation of general rules relating to retirement. I am accordingly to request that all references ~~to the Secretary~~ to the Centre in respect of such cases should in future be addressed to the Secretary to the Governor-General(Public). As stated in the Home Department letter quoted above, general matters relating to ~~the~~ the Services as a whole, will continue to be handled by the appropriate Department of the Government of India.

ANP
25-4-

No.1580/34-D,
Political and Services Department.
Bombay Castle, 15th June 1945.

Forwarded to:-

The Secretary to the Governor,

All Departments of the Secretariat (except the Separate Department),

for information in continuation of this Department endorsement No.1580/34-D, dated the 2nd March 1945.

By order of the Governor of Bombay,

Sd/-

For Chief Secretary to the Government of Bombay,
Political and Services Department.

(E.B.I)

Submitted for information.

Record

Id/-S.A.J.
12-7-45.

Id/-
12-7-45

Copy of a letter from the Government of India, Home Department, No.130/45-Ests, dated the 24th July 1945.

.....

Subject:- Requirement of Section 240(3) of the Government of India Act, 1935.

I am directed to say that the Federal Court have recently held, in the course of a judgement in appeal in a suit filed by an officer against his removal from service, that the provisions of sub-section (3) of section 240 of the Government of India Act, 1935 are mandatory and and contemplate that, after the enquiry against an accused officer has been completed, he should be given a further opportunity of showing cause against the particular penalty proposed to be inflicted when such penalty is dismissal, removal or reduction in rank. The Government of India have therefore, decided, in modification of the instructions contained in the Home Department letter No. 240/42-Ests. dated the 23rd February 1943, on the subject noted above, that the following procedure shall hereafter be followed in order to conform with the Federal Court's ruling.

After the enquiry against a Government servant has been completed and after the punishing authority has arrived at provisional conclusions in regard to the penalty to be imposed, the accused officer shmuld should, if the penalty proposed is dismissal, removal or reduction, be supplied with a copy of the report of the enquiring authority and be called upon to show cause, within a reasonable time not ordinarily exceeding one month, against the particular penalty proposed to be inflicted. Any representation submitted by the accused in this behlaf should be duly taken into consideration before final orders are passed. The same procedure shall be applicable in the case of officers subject to the x rule-making control of the Secretary of State except that where, in the case of such an officer, the penalty proposed can only be imposed by the Secretary of State the stage at which he should be called upon to show cause will, until further instructions, be after the Provincial or Central Government as the case may be, have received xhix the report of the enquiring x authority and have arrived at provisional conclusions in regard to the penalty to be recommended to the Secretary of State. The Officer's representation shall form part of the record of the case and shall be transmitted to the Secretary of State, for his consideration.

(2) I am to suggest that similar instructinon may be issued by the Provincial Government in so far as they are xxxxxxxx concerned.

No.2733/34-D.
Political and Services Department.
Bombay Castle, 6th August 1945.

Forwarded for information and guidance to:-
The Secretary to the Governor
The Prothonotary and Senior Master, High Court, Bombay
The Registrar, High Court, Appellate Side, Bombay
The Secretary, Bombay-Sind Public Service Commission
The Accountant General, Bombay,
All other Heads of Departments under the several Depts.
All Departments of the Secretariat,

in continuation of this Department endorsement No.2733/34-D, dated the 11th March 1943.

By order of the Governor of Bombay,

R.T.GORLEY,

for chief Secretary to the Government of Bombay
Political and Services Department.

Submitted for information.

Id/- S.A.J.
15-8-45

Record

Id-
17-8-45

Id/-
20-8-45

Copy of India Army order No.2621/45, dated the 15th December 1945, regarding holding of courts of inquiry by the military authorities in respect of incidents in which civil officials are involved.-

1. In all cases in which a court of Inquiry is set up to inquire into an incident, in which any civilian Government servant is involved or in which any Civilian Government Department obviously has an injury interest (e.g. an accident which has involved loss of life or injury to civilian Government personnel or damage to Government property as controlled by a civilian Government Department) then the officer who orders the assembly of the Court will be responsible for ensuring that a precis of the case, together with a list of relevant witnesses is forwarded to the XX Civil Authorities concerned to enable them to institute a departmental enquiry should they so desire.

2. If the terms of reference of any Court of Inquiry the appointment of blame or responsibility then the Court will confine themselves to such reference, and in no circumstances will they make any recommendations as to the taking of disciplinary action against a Civilian.

No.S.D.II/-S.36(a)/15053.
Home Department (Political)-War.
Bombay Castle, 29th January 1940.

Forwarded with compliments for information to:-

The Inspector General of Police, Province of Bombay,
All District Magistrates,
The Commissioner of Police, Bombay,
All Departments of the Secretariat (except the Separate Department).

By order of the Governor of Bombay,

Sd/-

For Secretary to the Government of Bombay,
Home Department.

E.B.(IO P. W. D.

Submitted for information.

Record.

Id/-
16-2-46

Id/-
16-2-46

Secy. (R&E)

Id/-
16-2-46

AHP
23-4-

Modified
vide GC P&SD 2733/34 dtd 9/8
in file No SNS 1037/73353-F

Government Servant,
Action to be taken when serious
allegations are made-.

GOVERNMENT OF BOMBAY.

Political and Services Department.
Circular No.2733/34.
Bombay Castle, 3rd July 1946.

CIRCULAR.

In the Circular, Political and Services Department No. 2733/34, dated the 9th December 1938, Government directed inter alia that immediately there was ground to believe that a prima facie case existed, the Government servant against whom the complaint had been made should be suspended. From cases coming to the notice of Government it appears that these orders are not being followed. Government therefore draws the attention of all Heads of Departments and offices to the Circular referred to and again directs that these orders should be scrupulously observed in all cases which fall within the scope of that Circular.

By order of the Governor of Bombay,

H. T. SORLEY,

Chief Secretary to the Government of Bombay,
Political and Services Department.

C.C.,No.2733/34, P. & S. D., dated the 3rd July 1946.

To
The Secretary to the Governor,
The Prothonotary and Senior Master, High Court, Bombay,
The Registrar, High Court, Appellate Side, Bombay,
All Heads of Departments and Offices under the several Departments of the Secretariat,
All Departments of the Secretariat,
The Secretary, Bombay-Sind Public Service Commission,
The Accountant General, Bombay.

No. of 1946.

Copy forwarded for information and guidance to

ANP
25-6-

Copy of the Government of India, Home Department, Memorandum, No.568/45-Ests., dated the 16th /19th May 194: addressed to All Departments of the Government of India, including the Finance Department (R.D.), the Labour Department (D.G.R.E.),

Subject:- Fundamental Rule 15-Interpretation of- Decision that the reversal of permanent arrangements in consequence of orders passed by the appellate or revisional authority is not barred by this rule.

A question having arised as to whether the reversal of permanent arrangements in consequence of any orders passed by the appellate or revisional authority, as the case may be, is barred by Fundamental Rule 15, it has been held with the concurrence of the Auditor General that if an officer having been dismissed or removed from service, or reduced in rank, or superseded by another officer, had a right of appeal against the penalty imposed on him, and his appeal is allowed, and equally if there is an authority competent to interfere, in revision, with orders passed by lower authorities imposing any of these penalties, and that authority sets aside the orders imposing that penalty, the reversal of any permanent arrangements made in the meantime may be considered to be the automatick consequence of the orders passed by the appellate or revisional authority, as the case may be, and that the provisions of Fundamental Rule 15, according to which a Government servant shall not be transferred substantively to a post carrying less pay, except under the circumstances mentioned in that rule, are not attracted in such case. In this connection attention is invited to the provisions of rules 59 and 61 of the Civil Services (Classification, Control, Appeal) Rules, and the Government of India's administrative instructions below Fundamental Rule 54 on page 196 of the P. & T. Compilation of Fundamental and Supplementary Rules, Volume I.

2. While the technical position is as stated above, there is no doubt that the reversal of permanent arrangement made in the vacancies caused by the dismissal, removal or reduction, etc., of Government servants, pending final decisions on their cases, may cause considerable hardship to the Government servants to be reverted and also administrative inconvenience. The undersigned is therefore deired to draw attention to the desirability of not making permanent arrangements in such vacancies as far as possible while an appeal or representation of an officer affected is pending or expected to be submitted and until a final decision thereon has been reached.

No. 2733/34-D.
Political and Services Department,
Bombay Castle, 27th June 1947.

Forwarded to with compliments to:-

The Secretary to the Governor,
The Accountant General, Bombay,
All Heads of Departments and Heads of Offices under the several Departments of the Secretariat.
All Departments of the Sedretariat.

for information and guidance.

2. Fundamental Rule 15 corresponds to Bombay Civil Services Rule 22.

By order of the Governor of Bombay,

J. CHAVES,
For Chief Secretary to the Government of Bombay,
Political and Services Department.

No.3518/38/30484.

E.B.(I) P. E. D.

Submitted for information

Record

Through AB I, AB II, W.B, Gen. B, Sl.B, IB I, IB II, OB I, OB II, and MB II.

Id/-
22-7-47

Id/-
22-7-47

Id/-
23-7

Id/-
22-7-47

Id/-
24-7-

Id/-
25-7-47

AMP
25-4-

Copy of a letter from the Government of India, Ministry of Home Affairs, No.30/43-Eets., Dated the 29th April 1948.

Subject:- Procedure for handling of individual cases against members of the Secretary of State's Services.

I am directed to refer to letters No.179/44-Eets., and No.30/38/43-dated the 19th February 1945, from the late Home Department and No.30/38/45-OC(A), dated the 28th May 1945, from the late Public Secretariat of the Governor General, in which the Provincial Governments were asked to address communications regrding disciplinery and other cases which related to individual officers of the Secretary of State's services serving in connection with the affairs of a province to the Secretary to the Governor General (Public). The basis of these instruction was that the Governor General in Council had no constitutional footing in matters affecting these officers in which the final orders were required to be passed by the Secretary of State for India. Under section 247 of the Government of India Act, as adapted however, the powers of the Secretary of State in this connection have now devolved on the Governor General and matters affecting the officers of the Secretary of State's services, whether serving in connection with the affairs of a province or of the Dominion, which hands immediately before the the transfer of power were regulated by rules made by the Secretary of State are now to be regulated by Rules to be prescribed by the Governor General. The old position in the matter, therefore, no longer holds good.

2. I am accordingly directed to request that communications regarding cases which relate to individual officers of the Secretary of State's who are serving in connection with the affairs of the Provinces, in regard to matters which require the orders of the Secretary of State in Council, may hereafter be addressed to the Government of India in the Ministry administratively concerned with the Service to which the officer belongs.

No.1530/34-D.
Political and Services Department.
Bombay Castle, 11th May 1948.

Forwarded to:-

The Private Secretary to the Governor,
All Departments of the Secretariat, (except the Separate Dept't),

for information and guidance in continuation of Political and Services Services.....

Services Department endorsement No.1580/34-D, dated the 15th June 1945.

By order of the Governor of Bombay,

S. G. Desai,

For Chief Secretary to the Government of Bombay,
Political and Services Department.,

3518/36
25113

P. W. D.

E. B. (I)

Submitted for information.

2. The instructions in para 2 overpage are noted.

Id/-
22-5-48

Id/-
22-5-48

Id/-
25-5

Id/-
26-5

ANP.

Copy of an Office Memorandum from the Government of India in the Ministry of Home Affairs No. 26/11/48-Estt, dated the 8th June 1948.

Subject:- Requirements of section 240 (3) of the Government of India Act, 1935.

The undersigned is directed to invite a reference to the judgement delivered by the Privy Council in the case; the High Commissioner for India and the High Commissioner for Pakistan versus L.M.Lall, and reported in Federal Law Journal, Volume XI, page 23. It will be observed that the Privy Council hold-

(i) that the provisions of section 240 of the Government of India Act, 1935, are mandatory and not merely permissive;

(ii) that sub-section (3) of section 240 qualifies subsection (1) and provides a condition precedent to the Crown's exercise of powers of dismissal under sub-section (1);

(iii) that the dismissal of a civil servant ordered without complying with the mandatory requirements of sub-section (3) may be declared to be null and void and inperative and the civil servant deemed to have contunued in service; and

(iv) that a Government servant has no claim against the Crown in tort, and that he cannot file a suit to recover his salary from the Crown, as salary is in the bounty of the Crown.

2. The implications of section 240 (3) were clearly explained and brought to the notice of all concerned by the late Home Department endorsement No.135/45-Estt., dated the 24th July 1945 (copy enclosed for ready reference). The Ministry of Home Affairs regret to observe, however, that since then several cases have occurred in which the requirements of that section were not kept in view or complied with. The result of this failure to observe the statutory requirements of section 240(3) has been that the orders passed in such cases were rendered null and void and the Government servants concerned had to be reinstated or the inquiries against as them had to be reopened. This has meant unnecessary and avoidable expenditure to the public exchequer and considerable embarrassment to the administration. In view of the serious consequences that ensue from a failure to observe the statutory requirements of section 240 (3), the undersigned is directed to emphasise, once again, the imperative necessity of scrupulous observance of those requirements in all cases in which that section is attracted. The undersigned is also to request that these instructions may be communicated for careful note and guidance to all the authorities under the Ministry of Finance, etc; who are vested with powers of removal or dismissal over any class of Government servant, it being also made clear to them that it will be their direct responsibility to ensure in each relevant case that the statutory requirements of section 240 (3) are duly observed.

3. The circumstances in which section 240 (3) of the Government of India Act, 1935 and rule 55 of the Civil Service (Classification, Contarl and Appeal) Rules are have already been detailed in the Memorandum, etc,

1. O. M. No. 510/45-Estt, dated the 17th June 1946
2. O. M. No. 25/3/47-Estt., dated the 12th March 1948.
3. Endt. No. 26/8/48-Estt., Dated the 17th July 1948.
4. O. M. No. 26/3/48-Estt., dated the 11th August, 1948.
5. O/ M. No. 26/6/48-Estt., dated the 8th September 1948.
6. O. M. No. 7/10/49-Estt., dated the 12th May 1949.

issued by this Ministry from time to time, vide details noted in the margin The position is, however, briefily restated below for ready reference:-

(1) Where the terms of appointment of an employee provide that his services may be terminated by notice of a specified period (ordinarily not less than one month either by the Government of to the employee or by the employee to the Government, termination of services by the requisite notice does not amount to dismissal. Under a rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, the service of every temporary Government servant, who is not in quasi-permanent service as defined by rule 3 of the said Rules, is liable to termination by one month's notice on either side. Section 240 (3) will not, therefore, be attracted in cases of termination of services (after giving the requisite Notice) of temporary Government servants governed by that rule. Since the vast majority of temporary Government servants who were in service on the date of making of the said Rules, the requirements of section 240 (3) will now have to be observed in a comparatively small number of cases.

are governed by that rule which also applies to the Temporary Govt. Servants

(2) In cases of employees not governed by rule 5 of the Ce-

Civil services (Temporary Service) Rules who were engaged for unspecified periods and whose appointment were not expressly stated to be until further orders, termination of thier service will attract section 240 (3) even though their appintments were expressed to be terminable at any time without notice.

(3) In cases of employees not governed by rule 5 of the Temporary Service Rules who were enganged on the xpress terms that their appointments were temporary and until further orders, termination of their services will not attract the provisions of section 240 (3).

(4) Where an employee is engaged for a specified period and termination of his service takes place at the end of that period, section 240 (3) will not be attracted.

(5) Compulsory retirement of an Officer, effected in pursuance of Note 1 to Article 465-A of the Civil Service Regulations attracts the provision of section 240 (3).

(6) The retirement of a ministrial Government servant governed by Fundamental Rule 56 (b) (i), after the age of 55 years, but before attaining the age of 60 years attracts the provision of section 240 (3).

(7) As has been made clear in this Ministry's letter No. 26/8/48-Ests., dated the 17th July 1948, and the Office Memo. No. 7/10/49-Ests., dated the 12th May 1949, rule 55 of the Classifiction Rules is not attracted in cases of termination of Services of temporary employees who are not in "quasi-permanent" service as defined in rule 3 of the Temporary Service rules, or in cases where a ministrrial Government servant, governed by Fundamental Rule 56(b) (i), is to be retired after attaining the age of 55 but before attaining the age of 60 or when a Government servant is to be compulsorily retired under Article 465-A, Civil Service Regulations. In such cases the only question for determination is whether section 240 (3) applies, and if so, to comply whith its requirements before ordering discharge, dismissal, retirement, etc. All that is necessary to secure compliance with those requirements in such cases is to indicate the grounds on which the action proposed is to be taken and to call upon the officer concerned to show cause whthin a period, ordinarily not less than 15 days and not exceeding one month, why such action shold not be taken Appropriate orders should then be passed after the representation if any, made by the Government servant concerned has been duly taken into consideration.

No. 5219/46-D.

Political and Services Department.

Bombay Castle, 8th December 1950.

Forwarded for information and guidance to:-

The Secretary to the Governor,
The Prothonotary and Senior Master, High Court, Bombay,
The Registrar, High Court, Appellate Side, Bombay,
The Secretary, Bombay Public Service Commission,
The Accountant General, Bombay,
All other Heads of Departments under the several Departmentsof the Secretariat,
All Departments of the Secretariat,

in contmuation of this Department endorsement No. 2733/34-D, dated the 6th August 1945.

2. Section 240 (3) of the Government of India Act, 1935, corresponds to Article 311 (2) of the Constitution of India.

By order of the Governor of Bombay

M. D. BHAT,
Chief Secretary to the Government of Bombay,
Political and Services Department.

E (1)
8-1

ANP.